

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In Re Application of:

Confirmation No.: 4646

Dean F. Jerding

Group Art Unit: 2424

Serial No.: 09/518,041

Examiner: Van Handel, Michael P.

Filed: March 2, 2000

Docket No.: A-6284/60374.0045US01

For: Apparatus and Method for Providing a Plurality of Interactive Program Guide Initial Arrangements

REPLY BRIEF UNDER 37 C.F.R. § 41.41

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a Reply Brief in response to the Examiner's Answer dated March 19, 2009 and subsequent Examiner's Answer dated April 28, 2009.

I. STATUS OF THE CLAIMS

Claims 121-144 remain pending in the present application. The Examiner's Answers dated March 19th and April 28th maintain the rejections of claims 121-144 under 35 U.S.C. § 103(a) and generally repeat the arguments advanced in the Final Office Action dated July 7, 2008, along with providing additional comments (in the Response to Argument Section (10)) in both Answers to the Appeal Brief, the latter filed on December 8, 2008. In addition, the Examiner's Answer dated April 28th levies a new ground of rejection to claims 137-144 under 35 U.S.C. § 101. Appellant acknowledges this new rejection. With regard to the substantive remarks of the Examiner's Answers, Appellant respectfully disagrees. Although Appellant will address some issues raised in the Examiner's Answer, Appellant continues to repeat, re-allege, and incorporate by reference the positions and arguments set forth in the Appeal Brief.

II. ARGUMENTS

Appellant addresses some of the rebuttal comments beginning on page 8 of the Examiner's Answer below. In view of the shared arguments of both Examiner Answers, Appellant addresses the rebuttal comments by referencing sections from the April 28th Examiner's Answer and referring to the "Examiner's Answer" (singular), with the intent that the same rebuttals outlined below also apply to the arguments presented in the March 19th Examiner's Answer. The omission of discussion pertaining to some issues raised in the Examiner's Answer should not be interpreted as an admission of the assertions made in the Examiner's Answer.

The Examiner's Answer alleges the following on pages 9-10:

...As such, the examiner interprets pressing guide key 398 to be an "activation instruction," as currently claimed....Cursor 394 does not move within grid 366 of the IPG. Program cells 396 of grid...and channel numbers 390...and times 396...scroll instead...Since the cursor does not move, the examiner notes that the cursor and channel shadow remain centered. LaJoie et al. further discloses that, when the user switches modes in the IPG, the default program highlighted and centered upon entering the new mode corresponds to the program being

viewed in program viewing mode window 340...As such, the examiner interprets the switching of modes to be a "focus instruction," subsequent to the activation instruction, to center the sequential channels to a current program to which the STT is tuned, and to highlight the one of the television program channels corresponding to the current program," as currently claimed.

Appellant respectfully disagrees. Appellant draws attention to the fact that page 5 of the Examiner's Answer ascribes the switching of modes in *LaJoie* to the claimed "arrangement instruction," and then later (pages 9-10), ascribes the same switching of modes also to the centering and highlighting actions (the "focus instruction"). In contrast, the claims recite two distinct instructions received by the processor and acted upon by the processor to (1) display the program information in one of at least two views and (2) center/highlight as claimed. In other words, the analysis above from the Examiner's Answer is missing an element, and hence a *prima facie* case of obviousness has not been established.

Further, addressing the arguments presented in the Examiner's Answer (page 10, towards the bottom) about manipulative difference, it is clear that acting on two separate instructions as claimed results in a manipulative difference when compared to *LaJoie*.

In addition, the analysis set forth above in the Examiner's Answer leads to a superfluous interpretation not likely, nor reasonably, to be followed by one having ordinary skill in the art. In other words, assuming *arguendo* invoking the IPG in *LaJoie* instantly results in the centering/highlighting in the IPG of the currently tuned program, what sense does it make to receive another instruction to perform the same function (i.e., centering and highlighting)? The requirement of a separate **focus instruction** in the claims evidences an implementation where the IPG display is not initially focused. One having ordinary skill in the art would not likely view an IPG mode switch in the context of the teachings of *LaJoie* as the claimed **focus instruction** to perform the highlighting and centering without improperly using Appellant's claims as a roadmap to come up with this analysis. To the extent *LaJoie* is relied upon for allegedly

supporting these claim features, Appellant respectfully submits that *LaJoie* fails in this regard and accordingly, Appellant respectfully requests that the rejection be overturned.

III. CONCLUSION

Based upon the foregoing discussion, the Appellants respectfully request that the Examiner's final rejection of claims 121-144 be overruled and withdrawn by the Board, and that the application be allowed to issue as a patent with all pending claims.

No additional fee is believed to be due. However, any additional fee that may be due or required is authorized to be charged to deposit account no. 13-2725.

Respectfully submitted,

Date: May 18, 2009

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